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**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT
ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)**

Docket Number (Optional)
161/107

First named inventor: Nikolay Nikolayev

Application No.: 10/722,779

Art Unit: 3652

Filed: November 26, 2003

Examiner: Not Yet Assigned

Title: DATA GENERATING DEVICE FOR BULK VENDING MACHINES

Attention: Office of Petitions
Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450
FAX (703) 872-9306

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (703) 305-9282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the office notice or action plus an extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee - required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

1. Petition fee

- ☒ Small entity-fee \$ 750.00 (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.
- ☐ Other than small entity - fee \$ _____ (37 CFR 1.17(m))

2. Reply and/or fee

A. The reply and/or fee to the above-noted Office action in the form of response to Notice to File Missing Parts (identify type of reply):

- ☐ has been filed previously on _____.
- ☒ is enclosed herewith.

B. The issue fee and publication fee (if applicable) of \$ _____.

- ☐ has been paid previously on _____.
- ☐ is enclosed herewith.

[Page 1 of 2]

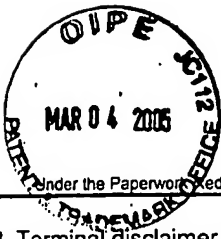
This collection of information is required by 37 CFR 1.137(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

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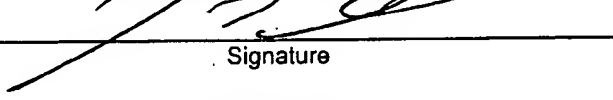


3. Terminal disclaimer with disclaimer fee

- ☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.
- ☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ _____ for a small entity or \$ _____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D)).]

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

 _____ Signature	_____ March 2, 2005 Date
_____ Michael R. Gilman Typed or printed name	_____ 34,826 Registration Number, if applicable
_____ Kaplan and Gilman, LLP, 900 Route 9 North, Woodbridge, NJ 07095 Address	_____ (732) 634-7634 Telephone Number
_____ Address	

Enclosures: ☒ Fee Payment

☒ Reply

☐ Terminal Disclaimer Form

☐ Additional sheets containing statements establishing unintentional delay

☒ Other: Exhibits A-D

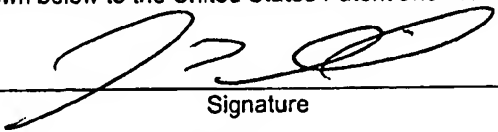
CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

I hereby certify that this correspondence is being:

☒ Deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.

☐ Transmitted by facsimile on the date shown below to the United States Patent and Trademark Office as (703) 872-9306.

March 2, 2005
Date



Signature

Michael R. Gilman
Typed or printed name of person signing certificate



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Nikolay Nikolayev
Title of Invention : DATA GENERATING DEVICE FOR BULK VENDING MACHINES
Date Filed : November 26, 2003
Serial No. : 10/722,779
Attorney Docket No. : 161/107

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**PETITION UNDER 37 C.F.R. §1.47(B)
WHEN INVENTOR REFUSES TO JOIN IN APPLICATION**

SIR:

This petition is being submitted pursuant to Rule 47(b), 37 C.F.R. 1.47(b), based upon the refusal of the only inventor, Nikolay Nikolayev, of Patent Application Serial No. 10/722,779 to join in the application.

Inventor Nikolay Nikolayev's last known residence is 84-10 34th Avenue, Flushing, NY 11372.

Inventor Nikolay Nikolayev has been properly notified regarding the application, and has been sent at least one copy of the application for his review. The extensive correspondence between the Rule 1.47(b) applicant, the inventor and counsel for the Rule 1.47(b) applicant make clear that Mr. Nikolayev understands exactly what he is being asked to sign.

On March 11, 2004, an assignment document and a Combined Declaration and Power of Attorney document were mailed to Mr. Nikolayev at the business address of Nova Resolution Industries, Inc. A copy of the letter and attachments are attached hereto as **Exhibit A**. On March

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15, 2004, an electronic transmission including a message and attachments of the patent application document, the Declaration and Power of Attorney document, and the assignment document was sent to Mr. Nikolayev. A copy of the message and attached Declaration/Power of Attorney and assignment documents forming part of the electronic transmission of March 15, 2004 are attached hereto as **Exhibit B**.

On March 16, 2004, Mr. Nikolayev sent an email to Michael Gilman, below signed counsel for the Rule 1.47(b) applicant, acknowledging receiving the patent application documents but requesting that 17 drawings forming part of the application also be sent. The content of an email message from Michael Gilman to Mr. Nikolayev preceding the message from Mr. Nikolayev is shown on the same page as Mr. Nikolayev's acknowledgement. On March 16, 2004, the 17 figures were faxed to Mr. Nikolayev. On March 18, 2004, Mr. Nikolayev sent another email to attorney Michael Gilman acknowledging receipt of the drawings. This chain of email correspondence is attached hereto as **Exhibit C**. Based on the foregoing, it is clear that Mr. Nikolayev received a copy of the patent application in addition to the formal documents associated with this patent application.

Beginning in about May, 2004, Mr. Nikolayev continued to refuse to sign the Declaration and Power of Attorney based upon his desire to have the assignment of rights to the application modified. These negotiations dragged on through the end of the year of 2004 with Mr. Nikolayev simply refusing to address the issue despite the efforts of the Rule 1.47(b) applicant and concessions by the same.

As shown by the foregoing, a diligent effort has been made to have Mr. Nikolayev sign the Declaration for this application, but to no avail.

Since the foregoing indicates that Mr. Nikolayev understands exactly what he is being asked to sign, Mr. Nikolayev's refusal to sign the application papers constitutes refusal to join in the application. Mr. Nikolayev's reasons for refusing to join in the application are not known.

PROOF OF PROPRIETARY INTEREST:

The Rule 1.47(b) applicant herein and the inventor, Mr. Nikolayev, entered into a Settlement and Dissolution Agreement requiring Mr. Nikolayev to “assign and/or otherwise transfer over to Nova any and all rights Nikolayev may have in any invention developed by Nikolayev” during his employment with Nova. A redacted version of the Settlement and Dissolution Agreement is attached hereto as **Exhibit D**, showing the pertinent language and signatures. While the filing date of this application is after Mr. Nikolayev's employment with Rule 1.47(b) applicant, the inventions described and claimed therein were invented by Mr. Nikolayev during his employment, and are therefore covered by the language of the Settlement and Dissolution Agreement, divesting Mr. Nikolayev of any rights to the invention and therefore, by implication, also requiring him to execute documents to effectuate the filing of the application.

PROOF OF NEED TO PRESERVE RIGHTS AND OF IRREPARABLE DAMAGE:

A Notice to File Missing Parts of Nonprovisional Application was mailed by the Patent Office on February 2, 2004. As seen above, the Rule 1.47(b) applicant tried diligently for months starting in March, 2004 to have the Declaration of inventorship signed by the inventor, Mr. Nikolayev, but to no avail. Accordingly, the application was officially abandoned on August 3, 2004. Nevertheless, even after abandonment, the Rule 1.47(b) applicant continued to try to have Mr. Nikolayev sign the inventorship documents, these efforts having not been finally abandoned until the end of January, 2005.

Official notice of the abandonment of the application was mailed by the Patent Office on December 2, 2004, and this Petition is being filed as diligently as possible after the breakdown in the negotiations between the Rule 1.47(b) applicant and the inventor, with some delay being the result of

applicant's undersigned attorney being unavailable to work on the matter due to other pressing legal matters and a vacation in February, 2005.

In order to preserve the Rule 1.47(b) applicant's rights in the subject application, this Petition is now necessary and is deemed the only way to have the application revived pursuant to the contemporaneously filed Petition For Revival Of An Application For Patent Abandoned Unintentionally Under 37 CFR 1.137(b).

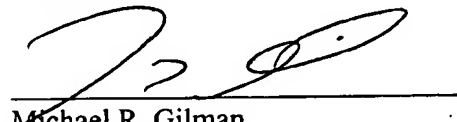
FEES:

This Petition is accompanied by a check in the amount of \$1,015 to cover: 1) \$65 for the late filing fee for the oath or declaration surcharge; 2) \$200 for the Rule 1.47(b) petition (under Rule 1.17(g)); and 3) \$750 for the Rule 1.137(b) Petition (under Rule 1.17(m)). The Commissioner is authorized to charge any deficiencies in these fees, or credit any overpayment, to our Deposit Account No. 11-0223.

Respectfully submitted,

KAPLAN & GILMAN, L.L.P.
900 Route 9 North
Woodbridge, NJ 07095
Telephone (732) 634-7634

DATED: March 2, 2005


Michael R. Gilman
Reg. No. 34,826

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal service as first class mail, in a postage prepaid envelope, addressed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA. 22313-1450 on this 2nd day of March, 2005.

Dated March 2, 2005

Signed 

Print Name Michael R. Gilman